IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.THANKAPPAN

WEDNESDAY, THE 24TH JANUARY 2007 / 4TH MAGHA 1928

Crl.L.P..No. 613 of 2006()

CC.669/2003 of J.M.F.C.,TIRUR
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PETITIONER/COMPLAINANT:

HAMEED, S/O.UNEEN HAJI,
PARAPPARA HOUSE, OMACHAPPUZHA AMSOM
PERINCHERI DESOM, P.O.OMACHAPUZHA
TIRUR TALUK, MALAPPURAM DISTRICT.

BY ADV. SRI.C.M.MOHAMMED IQUABAL

RESPONDENTS: ACCUSED & STATE:
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1. PADMANABHAN @ UNNI, S/O.VELAYUDHAN,
MANAKKAM VEETTIL HOUSE, VALAVANNUR AMSOM DESOM,
KURIKKOL, P.O.VALAVANNUR, TIRUR TALUK,
MALAPPURAM DISTRICT.

2. STATE OF KERALA, REPRESENTED BY
PUBLIC PROSECUTOR, HIGH COURT OF KERALA
ERNAKULAM.

R2-BY P.P.SRI.C.M.NAZAR

THIS CRIMINAL LEAVE PETITION HAVING COME UP FOR ADMISSION ON ON 24/01/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

K. THANKAPPAN, J.

Crl.L.P.No.613 OF 2006

Dated this the 24th day of January, 2007.

O R D E R

This is an application for special leave to appeal against the judgment in C.C.No.669/2003 on the file of the Judicial Magistrate of First Class, Tirur. As per the complaint, the 1st respondent had borrowed an amount of Rs.2,50,000/= from the complainant/petitioner herein, and in discharge of the above debt, the 1st respondent had issued Ext.P1 cheque. But, on presentation of the cheque for encashment, the same was dishonoured. Hence, according to the complainant, petitioner herein, the 1st respondent had committed an offence punishable under Section 138 of the N.I.Act. To prove the case against the 1st respondent, the petitioner himself was examined as PW1 and relied on Exts.P1 to P6. But, when the 1st respondent, accused, was questioned under Section 313 of the Code of Criminal Procedure, relying on Ext.D1 Karar the 1st respondent had contended that Ext.P1 cheque was issued not to discharge any debt legally owned by the 1st respondent to the petitioner whereas the same was

given as security in terms of Ext.D1 Karar. Having considered the entire evidence adduced by the complainant and on considering the case set up by the 1st respondent, the trial court found that the petitioner failed to prove that Ext.P1 cheque was issued in discharge of a legally enforcible debt. Hence, the trial court acquitted the 1st respondent.

On considering the entire evidence and the contention of the learned counsel appearing for the petitioner, this Court is of the view that the finding, entered by the trial court that the petitioner failed to prove any case against the 1st respondent under Section 138 of the N.I.Act, is on facts and evidence. In Ext.D1 Karar itself it is stated that the blank cheque was issued only as security for the execution of Ext.D1 Karar. Hence, the petitioner failed to prove that Ext.P1 cheque was issued in discharge of a legally enforcible debt and there was no consideration for the issuance of Ext.P1 cheque. Accordingly, this Court feels that the judgment of the trial court does not require any interference. Consequently, the special leave application stands dismissed.

K. THANKAPPAN, JUDGE.

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